

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Elimination of Main Studio Rule)	MB Docket No. 17-106
)	

To: The Commission

Comments of National Public Radio, Inc.

Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") programming through more than a thousand public radio stations nationwide. In addition to broadcasting award winning NPR programming, including All Things Considered[®] and Morning Edition[®], NPR Member stations are themselves significant program producers and community institutions. NPR operates the Public Radio Satellite System ("PRSS"), which enables a broad and diverse array of public radio program producers and radio stations to distribute local, regional, national, and international programming for broadcast. NPR also provides representation and other services to its Members and other public radio stations and producers.

¹ *In the Matter of Elimination of Main Studio Rule*, Notice of Proposed Rulemaking, 2017 FCC Lexis 1544 (May 18, 2017) [hereinafter "*NPRM*"].

Because of an unparalleled ability to serve local communities with broad range of news, information, and cultural programming, NPR and its Members are especially appreciative of the bedrock principle of "localism" on which the entire United States system of broadcasting is based.² While the principle of localism remains as vital as ever, a regulatory obligation to maintain a main studio rule in any given place is no longer needed to preserve localism, at least in the case of public radio. To the contrary, public radio stations are and, for a number of reasons will remain, inherently local program services and community institutions. The main studio rule forces public radio stations to allocate scarce resources to satisfy the rule regardless of the information and programming needs and interests of a station's community of license. NPR therefore endorses the Commission's proposal to eliminate the main studio rule and the accompanying staffing and program origination requirements.

I. As Inherently Local Institutions, Public Radio Continues to Provide Locally Responsive Service

Public radio stations are uniquely rooted in local communities, a fact readily acknowledged by the Commission in the past to justify a deregulatory approach to such stations without sacrificing localism.³

² See *NPRM* at ¶ 2 (discussing the main studio rule's statutory basis in Section 307(b) of the Communications Act of 1934, as amended, which provides for the allocation of broadcast facilities "among the several States and communities [so] as to provide a fair, efficient, and equitable distribution of radio service to each of the same").

³ When the Commission developed its original ascertainment and program logging rules during the 1960s and early 1970s, for instance, "public broadcasters were specifically excluded from the associated rulemaking processes." *In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rulemaking, 46 Fed. Reg. 43190, at ¶ 12 (1981) [hereinafter "*Public Broadcasting Deregulation NPRM*"]. When ascertainment and program logging requirements were subsequently developed for public broadcasting,

Thus, the very definition of the service, the status of its operating stations, and its essentially non-profit, noncommercial programming nature make public broadcasting stations very different in programming terms, from their commercial counterparts.⁴

That public radio is a uniquely local service is no accident.

In establishing the current public broadcasting system 50 years ago, Congress recognized that "[l]ocal stations are the bedrock of this system and as such must be responsive to the needs and desires of the public which they serve."⁵ Congress has since recognized and sought to encourage the important relationship that exists between public radio stations and their communities.⁶ To this day, public radio stations comprise a wide variety of public and private, community-based organizations, including non-profit community groups, colleges and universities, school boards and other local governmental entities, and state governmental entities.

Public radio's inherent localism starts with the eligibility criteria to hold a license to operate an NCE station. Under the Communications Act and the Commission's rules, only two types of entities are qualified to operate an NCE station: governmental entities

the Commission accorded public broadcasters, and public radio stations in particular, flexibility in meeting the requirements. *Id.*, 46 Fed. Reg. 43190, at ¶¶ 17-20. When the Commission eliminated those same ascertainment and program logging requirements, it cited the unique attributes of public broadcasting. *In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Report and Order, 98 F.C.C.2d 746, 751 (1984) [hereinafter "*Public Broadcasting Deregulation Report and Order*"].

⁴ *Broadcasting Deregulation Report and Order*, 98 F.C.C.2d at 751.

⁵ S. Rep. No. 222, 90th Cong., 1st Sess. 7 (1967).

⁶ *See, e.g.*, H.R. Conf. Rep. No. 1774, 95th Cong, 2d Sess. 30-31 (1978) (finding that public meetings permit and encourage community involvement in the programmatic and operational decisions of noncommercial educational licensees)

and nonprofit educational organizations⁷ and both are uniquely compelled to serve their local communities.⁸ In addition, an array of social forces further obviate the need for regulation to assure public radio station accountability to their communities of license. These forces include statutory obligations to establish and maintain community advisory boards⁹ and conduct open public meetings.¹⁰ Stations regularly solicit and receive public input through community advisory boards and interact with their communities through e-

⁷ See 47 U.S.C. § 397(6); 47 C.F.R. § 73.503(a). See also *In the Matter of Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd. 6691, 6695-96 (2003).

⁸ Indeed, because governmental entities are directly accountable to the residents whom they govern, the Commission defines such entities as "local" throughout the area within which their authority extends. *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd. 7386, at 7409 (2000) [hereinafter "*NCE Comparative Standards Report and Order*"]. Nonprofit educational organizations are required by Federal and state laws to serve a charitable educational purpose. See 26 U.S.C. § 501(c)(3); see, e.g., D.C. Code § 47-1802.01. Localism is also the overriding factor in the selection of new NCE licensees. See *NCE Comparative Standards Report and Order*, 15 FCC Rcd. at 7409-10.

⁹ See 47 U.S.C. § 396(k)(8) (requiring each public radio station not licensed to a governmental entity to establish and maintain a community advisory board as a condition of receiving CPB funds). While public radio stations licensed to governmental entities do not bear this obligation, the Commission has long recognized that these stations are subject to sufficient other safeguards to assure their ongoing community responsiveness.

While it is true that stations licensed to state or local jurisdictions are not required to have advisory boards, these stations are often under even more direct public control since state and local officials are accountable for their action or inaction through the electoral process. Other stations licensed to organizations with a primary educational purpose are subject to the direction of these institutions and their governing boards. The station that ignores these representatives does so at its own peril.

Public Broadcasting Deregulation Report and Order, 98 F.C.C.2d at 754.

¹⁰ See 47 U.S.C. § 396(k)(4) (requiring each public radio station to hold board meetings that are open to the public and to give the public reasonable notice of these meetings in order to receive Federal funding).

mail, letters, telephone calls, faxes, public meetings, outreach meetings, local public broadcasting "friends" organizations, station web sites, and participation by station personnel in community organizations and activities.

Finally and most directly, public radio stations are financially dependent on their listeners. Roughly 80 percent of an average public radio's annual finances are generated by locally sourced revenues from local listeners, local underwriters and local and regional foundations.¹¹ Importantly, local listener support represents the single largest source of station revenue at 37%,¹² a percentage that has only increased over time.¹³ As the Commission has previously recognized, the direct financial relationship between public radio stations and their communities is often the most effective determinant of how well a station is ascertaining and serving the needs and interests of its community of service.¹⁴

These institutional, social, and financial forces may not constitute "competitive market forces" as referenced in the *NPRM*,¹⁵ but they are more than adequate

¹¹ Public Broadcasting Revenue, Fiscal Year 2015, Table 2, *available at* www.cpb.org/files/reports/revenue/2015PublicBroadcastingRevenue.pdf

¹² *See id.* (Public Broadcasting Revenue by Source, FY 2015)

¹³ *Public Broadcasting Deregulation Report and Order*, 98 F.C.C.2d at 753 n.17 (reporting that "[p]ublic broadcasting as a whole receives about one-sixth of its revenue from individual subscribers").

¹⁴ *See id.*, 98 F.C.C. 2d at 753-754 (finding that "the relationship between the audience and the local public broadcaster is even more direct than [sic] in the case of commercial broadcasting because public broadcasting's subscribers pay directly for programming that meets their needs and interests").

¹⁵ *See NPRM* at ¶ 8 (inquiring whether "competitive market conditions ensure that stations will continue to keep apprised of significant local needs and issues").

substitutes.¹⁶ Public radio stations continue to demonstrate a deep commitment to localism through extensive local programming efforts, support for local arts, cultural, and non-profit organizations, online and other non-broadcast initiatives, and service to historically underserved audiences. Eliminating the main studio rule will not change that commitment or the resulting public service enjoyed by millions of Americans today. At least with respect to public radio, therefore, eliminating the main studio rules would have no adverse effect on a broadcasting system founded on the principle of localism.¹⁷ Indeed, because of public radio's uniquely local character, the Commission could well limit the elimination of the main studio rule to public radio stations.¹⁸

II. Elimination Of The Main Studio Rule Would Directly Enhance The Ability of Public Radio To Serve The Public

The lack of a compelling need to maintain the main studio rule should alone justify its elimination, but the rule, including the accompanying staffing and program origination requirements,¹⁹ also intrudes on each public radio station's ability to allocate scarce financial and human resources to programming serving the needs and interests of the station's community of license. Thus, as the *NPRM* anticipates,²⁰ the main studio rule

¹⁶ See *id.* at ¶ 7 (inquiring whether "there any particular issues we should be aware of with regard to eliminating the main studio rule for non-commercial broadcast stations?").

¹⁷ See *id.* at ¶ 8 ("We seek comment on whether the current main studio rules and related requirements are necessary to implement section 307(b) of the Act.").

¹⁸ See *id.* at ¶ 14.

¹⁹ See *id.* at ¶ 9 (citing *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215, 3218, (1987)).

²⁰ See *id.* at ¶ 7 (inquiring whether "eliminating the main studio rule, as well as the

forces the allocation of resources away from serving the public directly through news, information, and cultural programming, and it does this in the interest of satisfying a regulatory obligation that is intended to encourage the station to serve the public.²¹ The consequences are most severe for the most resource-challenged stations, which describes many public radio stations, especially those in rural and other less densely populated areas.²²

The main studio rule also raises significant First Amendment concerns in another way. Although public radio stations are inherently local institutions, NPR rejects the assumption that a program is responsive to local needs merely because it was produced at a given location, local or not. As the Commission has previously recognized, a national program may be of substantial local value, especially because more resources can be devoted to investigating and reporting the issue and producing the program.²³ Indeed, one of the compelling features of NPR's signature news magazines, *Morning Edition* and *All Things Considered*, is the ability of stations to "localize" their presentation of nationally distributed programs by including news, public affairs and other program

associated staffing and program origination capability requirements, enable broadcasters to allocate greater resources to programming and other matters").

²¹ The main studio rule, as a form of "command and control" regulation, is precisely the type of broadcast regulation warranting reevaluation to determine its continuing necessity. See Report, Spectrum Policy Task Force, ET Docket No. 02-135, at 44-45 (2002), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-228542A1.pdf

²² See <http://www.cpb.org/aboutpb/rural>.

²³ See *In the Matter of Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd. 12425, at 12431 (2004) (noting that "[a] program, for example, that discusses teenage drinking generally may be highly relevant to a particular community even though it is not produced specifically for that community or tailored to its particular problems in this area.")

segments produced locally and directed to the station's community of license. Likewise, NPR and other national producers of cultural programming take great care in their selection of new and emerging music and artists to feature, and a station's decision to offer such programming cannot be discredited just because the programming was not produced by a local station purely for its own community.²⁴ For this and other reasons, the main studio rule and the related program origination and staffing obligations are no longer reconcilable with First Amendment values, if they ever were.²⁵

To be sure, the Commission has liberally granted public broadcasting stations waivers of the main studio rule in the past. In revising the original main studio rule to permit stations to locate its main studio modestly outside its community of license, the Commission noted that, "[i]n the past, we have recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted networks to operate 'satellite' stations that do not necessarily meet the requirements of a main studio."²⁶ Thus, the Commission has recognized that public radio stations do not require a main studio rule to serve the public interest, and there is no evidence to suggest that stations operating with a main studio waiver are any less responsive to community needs and interests.

²⁴ Many of the most captivating music-oriented programs, such as *World Cafe*, originated as local-only station productions (WXPB-FM, Philadelphia, PA, in the case of *World Cafe*) and have since been distributed nationally because of their appeal to local audiences across the country. See <http://www.xpn.org/world-cafe>.

²⁵ See *NPRM* at ¶ 9.

²⁶ *In the Matter of Amendment of Section 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd. 5024, 5027 (1988).

Nor would eliminating the main studio rule have any adverse impact on a public radio station's ability to deliver emergency alerting.²⁷ That is both because public radio stations remain committed to serving the information needs of their communities of license in times of particular need and because the emergency alerting system is largely automated, with human intervention in the form of "alerting authorities" not dependent on a physical presence in a specified location.²⁸ Requiring public radio stations to maintain and staff a main studio is therefore unnecessary and counterproductive.²⁹

Finally, eliminating the main studio rule would have no negative impact on a public radio station's engagement with the residents of its community. Such engagement is hardly a challenge for public radio stations, which, as noted above, are dependent on community financial support. There is also no need for the Commission to adopt specific regulatory requirements beyond the obligation under Section 73.1125(e) of the Commission's rules to maintain a local or toll-free phone number.³⁰ Visits to stations to

²⁷ See *NPRM* at ¶ 8 (inquiring whether "eliminating the main studio rule [would] impact a station's ability to communicate time-sensitive or emergency information to the public?").

²⁸ See *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Notice of Proposed Rulemaking, 31 FCC Rcd. 594, 597-600 (2016) (describing the EAS architecture). In addition to alert initiation by state and local authorities, the system is designed to permit national level alerting initiated by the President of the United States, the original purpose of the system. *Id.* at 597.

²⁹ With regard to emergency alerting specifically, and with one modification, NPR therefore supports the Commission's conclusion that "technological innovations have rendered a local studio unnecessary." *NPRM* at ¶ 6. A public radio station may determine that maintaining local studio is absolutely necessary to its ability to serve the public, but a *regulatory command* to maintain a studio in a specified location is unnecessary.

³⁰ See *id.* at ¶ 10.

request access to hard copy public inspection files are extraordinarily rare, but, even for stations that have yet to transition to online filing, the availability of a telephonic means of requesting public file access, combined with reasonable accommodation to examine the file's contents, is sufficient.³¹

Conclusion

For all these reasons and as more fully addressed above, NPR supports the elimination of the Commission's main studio rule and associated program origination and staffing requirements and opposes deferring such elimination in the case of stations that have yet to transition to the online filing of public inspection files.

Respectfully submitted,

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³¹ *In re Bernard Ohio, LLC & Educational Media Foundation*, 28 FCC Rcd. 126, 135 & n.69 (2014). *See NPRM* at ¶ 11.